IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1 OF 2002

Union of India,
through General Manager,
Central Railway , Mumbai Division,
Maharashtra. ... Petitioner

Versus

Ahuja Tikam Shewaram,
Adult Indian Inhabitant,
resident of 6, Sai Kripa Apartment,
Near Barrack No. 190, Ulhasnagar,
Pin 420 001. ... Respondent

Mr. Sureshkumar for Petitioner.
Mr. Saikukmar Ramamurthy for Respondent.

ALONG WITH

WRIT PETITION NO. 2454 OF 2003

T.S.Ahuja,
formerly employed as
Head Luggage Clerk in
Central Railway, C.S.T.
Mumbai 400 001
and residing at 6, Saikrupa
Apartment, Near Sadhubaba School,
Ulhasnagar 421 001. ... Petitioner

Vs.

1. Union of India,
through the General Manager,
Central Railway,
CST,Mumbai 400 001.

2. The Senior Divisional Commercial
Manager,
Central Railway, Mumbai Division,
CST, Mumbai 400 001.

3. The Divisional Commercial Manager,
Central Railway, Mumbai Division,
CST, Mumbai 400 01.

4. The Divisional Railway Manager (P),
Central Railway, Mumbai Division,
Personnel Branch,
CST, Mumbai 400 001.

Mr. Saikumar Ramamurthi for Petitioner.

Mr. Sureshkumar for Respondent Nos. 1 to 4.

CORAM: F.I. REBELLO &

ANOOP V. MOHTA,JJ.
DATED: NOVEMBER 09, 2006

P.C.:

. Writ Petition No. 1 of 2002 has been preferred by the Union of India to impugn the order of CAT dated 19.7.2001 whereby the learned tribunal was pleased to set aside the order of compulsory retirement imposed on the respondents by order dated 12.3.2006 and the order of the appellate authority dated 29.3.1994. The learned tribunal also directed the petitioners herein to pay to the respondents allowances and other retirement benefits in accordance with the law and rules.

. Writ Petition No. 2454 of 2003 is by the respondent in Writ Petition No. 1 of 2002. This petition is basically filed in the matter of fixation of the pensionary benefits though there are other reliefs which are also prayed by them.

2. We shall refer to Respondents in Writ Petition No. 2454 of 2003 as delinquent employee and the Petitioner as Union of India in both the Petitions. A chargesheet had been served on the delinquent employee. It contained one article of charges. The said charges read as under :

"That the said Shri. T.S. Ahuja, ECRC VT

while working as ECRC at Bombay VT during January 83 on window No. 71 & 50 committed serious misconduct in that - Shri.Ahuja has granted refunds on 60 tickets on various dates in January 83 to the passengers who had surrendered their tickets for cancellation. Out of the 60 tickets, 146 tickets having confirmed reservations but, Shri. Ahuja had shown them as RAC tickets. Balance 14 tickets, he had altered the date of journey on tickets and thus shown an amount of Rs.95.50 in TA statement as cancellation charges collected. But, actual an amount of Rs.1,234/- was due as cancellation charges in this case. He had thus misappropriated an amount of Rs.1,138.50 due to the Railway from Railway earnings. Therefore,Shri.Ahuja had contravened Railway servant conduct Rule No. 3 of 1968."

. An enquiry came to be conducted where the delinquent employee was given an opportunity. After recording evidence on behalf of the department and the delinquent employee, the enquiry officer recorded his filings and held that the delinquent employee had altered the date of journey by overwriting against the original endorsement of

reservation and enhanced the date of journey to get monetary benefits and had thus misappropriated the amount of Rs.1138.50 due to the Railway from the railway earnings. The report of the enquiry officer was made available to the delinquent employee. The disciplinary authority thereafter by order dated 12.2.1986 imposed the penalty of compulsory retirement from the service in the existing grade and pay with immediate effect. It will be relevant to reproduce Paragraph 2 of the order of the Disciplinary authority which reads as under :

> "2. I have carefully gone through the enquiry report and its proceedings and I accept the findings of the enquiry officer. The delinquent employee is liable for exemplary punishment as he is proved to be involved in fraud, leading to loss of railway revenue. Even if it is not possible top prove that you had yourself altered the dates of the tickets, you are supposed to check the endorsement and verify the correctness when the tickets tendered to him for refund had alterations. Considering the above facts, I have decided to impose upon you the penalty of compulsory retirement from service in the existing grade and pay with immediate effect."

. The Petitioner aggrieved by the said order, preferred a statutory appeal. That came to be dismissed by order dated 9.4.1986.

3. Aggrieved by the same, the delinquent employee preferred O.A. No. 927 of 1988. By judgment and order dated 14.12.1993, the order of the appellate authority was set aside on the ground that no personal hearing was given. After so saying the tribunal directed the appellate authority to give delinquent employee hearing and pass a speaking order dealing with the points seriatim which may be raised by the delinquent employee at the personal hearing. Pursuant to the said order of remand, the appeal was heard once again and by the order dated 29.3.1994 the appeal preferred was dismissed.

4. The Petitioner aggrieved preferred O.A. No. 880 of 1994. Before the tribunal, it was urged on behalf of the delinquent employee that inspite of the order of remand, the appellate authority had not passed a speaking order and had not dealt with the points in seriatim. It was secondly urged that the charge in respect of which the delinquent employee had been found guilty by the disciplinary authority and upheld by the appellate authority is different from the charges levelled by letter dated 18.4.1984.

It was submitted that the Disciplinary Authority by holding that it was proved that the delinquent employee was involved in fraud and appellate authority in upholding the said finding could not have come to a conclusion different from the charges levelled against the delinquent employee. The third submission which was made was that the plea of bias against Enquiry Officer had not been considered. For that purpose reliance was placed on the letter dated 12.1.1985. That letter was addressed to the Divisional Commercial Superintendent (DCM) Central Railway, Bombay.

. The learned tribunal after considering the various contentions noted the findings recorded by the Disciplinary authority which we have earlier reproduced and came to the conclusion that the charges against the Petitioner had not been established. The learned tribunal also noted that inspite of the fact that the appellate authority had been directed to pass a speaking order dealing with the points in seriatim, raised by the D.E., that had not been complied with. The appellate authority also found favour in the contention of bias raised by D.E. and for all the aforesaid reasons, set aside the order of the Disciplinary authority and the appellate authority and passed the impugned order. It is this order which is the subject matter

of Writ Petition No. 1 of 2002.

. At the hearing of this petition, on behalf of the Union of India, their learned counsel has urged the following points :

. Firstly, that the enquiry Officer has come to the conclusion that the petitioner was guilty of the charges. That the Disciplinary authority had concurred with the said findings of the Enquiry Officer and though in the subsequent part of the order, the Disciplinary authority had noted that the charges of overwriting had not been established. That was only in the alternative. As there are two concurrent findings of fact against the delinquent employee, the order ought not to be interfered with.

. Secondly, it is submitted that the appellate authority in appeal need not pass a detailed speaking order. The order passed by the Appellate authority would disclose application of mind and once that be the case, it was not open to the learned tribunal to have interfered with the findings of fact recorded by the Disciplinary authority and the appellate authority.

. Thirdly it is submitted that the plea of bias was

really not established as the plea was neither raised before the Disciplinary authority nor before the Enquiry Officer. The delinquent employee proceeded without any further protest before the Enquiry Officer and in these circumstances, clearly had waived the said plea.

5. We may deal with the first contention. The very point urged before us had been urged before the tribunal. The tribunal after considering the said contentions has answered the said point against the Union of India. The question is whether the said finding discloses any error of law apparent on the face of the record. Even in an appeal if two views are possible, and the court below has taken a view which is possible, the Appellate Court would not ordinarily interfere with the said findings. In the instant case, the delinquent employee at the relevant time, was placed in a post of refund clerk which involved refund of amount of cancelled tickets. The delinquent employee himself was not involved with the exercise of direct refund of amount. The job of the Delinquent employee was to refund the amount in terms of the directions of the cancellation clerk who was accepting the said tickets. It is true as has been urged before us by the learned counsel of the Union that the Enquiry Officer had recorded a finding that it was the

delinquent employee who had made over writing. It is however, always open to the Disciplinary authority to differ with the findings of the Enquiry Officer. In the instant case, though in the earlier part of the order, the Disciplinary authority noted that he concurred with the findings of the enquiry Officer. Yet in the same breath held that there was no material to establish that it was the delinquent employee who had made the overwriting on the ticket. The cancellation clerk was not examined.

. The learned counsel then points out that there has been loss caused to the railways. For that purpose, it has to be categorically established that it was the delinquent employee who had made the over writing on the ticket. The delinquent employee based on the writing on the ticket had refunded the amount. If it is not established that it was the Delinquent employee, who had done the overwriting, it is not possible to hold that he had caused any loss. At any rate this is a matter which has been gone into by the learned tribunal. It is not possible for us to say that the view taken by the tribunal was a view not possible to be taken. It is a view which could be taken considering the findings of the Disciplinary authority itself. In the light of that matter, we are clearly of the opinion that

the order to that extent does not suffer from any error of law apparent on the face of the record.

6. We may now deal with the second contention as to the order of the appellate authority. In the instant case, it is not as if the appellate authority was acting for the first time in disposing of the appeal. The order had been remanded back to the appellate authority by the tribunal duly conferred with the jurisdiction with a direction to dispose of the appeal after giving a hearing and giving reasons on the points urged before the appellate authority. We have perused the impugned order and we find that there was total non compliance by the appellate authority with the directions of the tribunal. The submission therefore, of the learned counsel for Union of India that the appellate authority need not give reasons, in our opinion can not apply to the facts of this case. The appellate authority was bound to follow the directions given by the learned tribunal. The second contention must also therefore, be rejected.

7. In so far as the last contention of bias is concerned, we agree with the learned counsel for the union, that there was no material to hold that the enquiry officer was biased. Mere writing of a letter to an authority authority other than the

disciplinary authority and not raising it before the Enquiry Officer cannot result in holding that the Enquiry officer was biased. Firstly the delinquent employee if has objection, had not been dealt with by the authority to whom he address the letter, ought to have raised the objection before the Enquiry Officer. That has not been done. On the contrary he participated in the proceedings. The law on the subject of bias is well settled, the plea of bias can be waived. In the present case, having participated in the proceedings without raising objection before the Enquiry Officer or before the Disciplinary authority, we are clearly of the opinion that this plea was not applicable to the delinquent employee. The finding of the tribunal on that count has to be set aside.

8. Having said so, we are clearly of the opinion that the order of tribunal need not be interfered with.

. However, considering the facts and circumstances, we clarify the order of the tribunal by issuing the following directions :

(1) The order of compulsory retirement was passed on 12.2.1986. The Petitioner superannuated on 30.6.1994. In these circumstances, the delinquent

employee will not be entitled to any back wages for the period from 12.2.86 to 30.6.84, but will be treated as on duty and will be paid all terminal benefits as if he was on duty till his superannuation.

(2) In so far as Writ Petition No. 2454 of 2003 is concerned, in view of the order passed in W.P. No. 1 of 2003, nothing survives in this petition. However, in case the petitioners benefits are not paid in terms of the order of this court, it will always be open to the delinquent employee to move the appropriate forum for necessary directions.

(3) Considering that this is a old matter, we direct the Union of India to fix and pay pension in terms of our directions at any rate not latter than six months from today.

. Rule made absolute in above terms. No order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**